

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ANTHONY STARRETT,

Defendant-Appellant.

UNPUBLISHED

November 22, 2002

No. 234059

Cass Circuit Court

LC No. 00-010475-FH

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction for assault with intent to commit great bodily harm, MCL 750.84, and felon in possession of a firearm, MCL 750.224f. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

During voir dire, a prospective juror stated that she knew defendant and complainant and that she saw complainant “after [defendant] got through with her.” The juror was excused. After the jury was sworn and the prosecutor gave her opening statement, defendant moved for a mistrial, asserting that the jury was tainted by the remark. The trial court denied the motion, and defendant was convicted as charged.

A trial court’s denial of a mistrial will not be reversed absent an abuse of discretion. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). A mistrial should only be granted for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial. *Id.* An unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial. *Id.* This Court has held that an irregularity such as the mention of a prior felony conviction to a jury pool that is countered by a proper instruction, does not result in manifest injustice. *People v Rodgers*, 248 Mich App 702, 714-715; 645 NW2d 294 (2001).

The jury was inadvertently informed that an excused juror had prior contact with defendant and complainant and she saw the injuries defendant inflicted. The jury was instructed to consider only the evidence admitted at trial. Direct evidence of complainant’s injuries was presented, and defendant admitted that he assaulted complainant. Given the evidence presented, the excused juror’s statement was not an irregularity that prejudiced defendant’s rights, and it did

not impair his ability to get a fair trial. The trial court did not abuse its discretion in denying a mistrial. *People v Cunningham*, 215 Mich App 652; 546 NW2d 715 (1996).

We affirm.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski